

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60163

FILE: B-184438(2)

DATE: November 14, 1975

MATTER OF: Gladstone Associates

97735

DIGEST:

Protest filed with GAO more than 10 working days after notification of initial adverse action regarding protest to contracting agency is untimely and will not be considered on the merits, and time to file protest at GAO is not tolled because protester also waited for results of its requested protest review by Office of Secretary of Commerce.

Gladstone Associates has protested the allegedly improper contract award to another offeror by the Department of Commerce pursuant to request for proposals (RFP) No. 5-36829 on the grounds that proper evaluation of offers would have resulted in award to Gladstone.

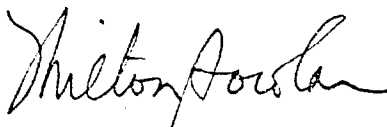
The RFP was for a planning study for the revitalization of the central business district of East St. Louis, Illinois, and it ultimately resulted in five best and final offers. While initial analysis of these offers indicated to Commerce that award should be made to Gladstone, a complete review of the proposals led the agency to determine that the proposal of Ernst and Ernst was most advantageous to the Government. Thus, an award was made to that firm on June 30, 1975.

Following a debriefing on July 11, 1975, Gladstone filed a protest with the contracting officer by letter of July 15, 1975. The basis of its protest to Commerce, which it repeats to this Office, was that the contracting officer's initial decision to make award to Gladstone was proper and should not have been altered. Also, Gladstone alleged that certain alterations were made in the offerors' technical scores which may not have been warranted, and that one evaluation criterion was applied to the proposals in an unfair and disparate manner. The record indicates that Gladstone also referred this protest to the Secretary of Commerce on August 1, 1975, because a response by the contracting officer had not then been received, and that the Secretary's Office advised on August 6 that a complete review would be made. By letter of August 7, 1975, the contracting officer denied the protest, and by letter of August 21, 1975, this action was concurred in by the Office of the Assistant Secretary of Commerce for Administration. Gladstone forwarded the present protest to this Office by letter of August 29, 1975, which was filed September 4, 1975.

Section 20.2(a) of our Bid Protest Procedures provides that if a protest has been filed initially with the contracting agency any subsequent protest to this Office will be considered provided, inter alia, that the protest be filed with GAO within ten working days of formal notification or actual or constructive knowledge of initial adverse agency action. 40 Fed. Reg. 17979 (1975). Since Gladstone's protest to Commerce was initially denied by letter of August 7, 1975, and since its protest to this Office was filed almost one month later, it is untimely. While the protester is unable to precisely determine when it received the August 7, 1975 letter, we have no reason to conclude that notice of the agency action was not received until 10 working days prior to September 4, 1975, since the August 7 letter was both mailed and received in Washington, D.C., and since that letter confirmed the substance of a telephonic communication between the contracting officer and a representative of Gladstone.

Moreover, the time to file its protest at GAO was not tolled for Gladstone because it also waited for the promised protest review by the Office of the Secretary. We consider the contracting officer's rejection of Gladstone's protest as the initial adverse agency action contemplated by our Bid Protest Procedures. The fact that Gladstone was awaiting additional review by a second level of Commerce does not alter or detract from the contracting officer's decision, and could not operate to extend the time limits for filing its protest with this Office. JDL General Contractors & Associates, B-183415, April 8, 1975, 75-1 CPD 214, aff'd, B-183415, June 6, 1975, 75-1 CPD 344; Modern Moving and Storage, B-182420(2), January 16, 1975, 75-1 CPD 26.

Therefore, Gladstone's protest to this Office, filed September 4, 1975, asserting the same grounds of protest as initially presented to Commerce, is untimely as not filed within 10 working days of notification or knowledge of initial adverse agency action, and accordingly, we will not consider it on the merits.


for Paul G. Dembling
General Counsel